HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.212 of 2007

Between:

The Kanipakam Gram Panchayat,
Kanipakam Village, Irala Mandal,
Chittoor District, rep., by its
Sarpanch Smt. T. Lalithamma,
W/o T. Arjunaiah, Aged 40 years,
R/o. Kanipakam, Irala Mandal,
Chittoor District

... Appellant

And

The Swayambhu Sri Varasiddi Vinayaka Swamy Temple,
Kanipakam, Irala Mandal, Chittoor District,
Rep., by its Executive Officer
and Regional Joint Commissioner
and two others.

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri D. Vijayachandra Reddy

March 8, 2007

Per G.S. Singhvi, C.J.

This appeal by Kanipakam Gram Panchayat, Kanipakam Village, Irala Mandal, Chittoor District for setting aside order dated 01.03.2007 passed by the learned Single Judge in W.P.M.P.No.5096 of 2007 in Writ Petition No. 3986 of 2007 can appropriately be termed as a vexatious piece of litigation, which deserves to be dismissed with costs.

It is borne out from the record that the appellant Gram Panchayat had filed Writ Petition No. 19531 of 2004 questioning notice dated 15-10-2004 issued by the management of the Swayambhu Sri Varasiddi Vinayaka Swamy Temple (for short 'the temple') for auction of the right to collect fee from the vehicle owners using the parking lot developed near the temple. In the counter-affidavit filed by the management of the temple, it was pleaded that the temple had acquired land measuring Ac.2.35 cents comprised in Survey Nos.1/13 to 1/16, 1/16A and 2/2 of Punya Samudram Village, Thavanampalli Mandal by paying compensation to the land owners and developed the same as parking lot. It is also borne out from the record that the learned Single Judge appointed Advocate Commissioner for inspecting the site and after considering the report submitted by the latter, he i.e. the learned Single Judge dismissed the writ petition by recording the following observations:

> "…….. A perusal of the report would disclose that on question No.1, the Advocate Commissioner reported that the land in an extent of AC.2.35 cents in Sy. Nos. 1/13 to1/16, 1/16A and 2/2, is situated in Punya Samudram Village, which borders Kanipakam Gram Panchayat; that the respondent developed the said land as parking lot, and that except one canteen, which is situated in Kanipakam Gram Panchayat limits, the entire land developed by the respondent as parking lot, also has a provision for ten drinking water taps and bathrooms, and that as they are all situated in Punya Samudram Vilage and that the respondent at the time of inspection had submitted a certificate issued by the Mandal Revenue Officer, Thavanampalli, stating that the parking lot in Sy.No.2/2 in an extent of 0.91 cents in Punya Samduram Village developed by the temple, was handed over to it and that the Temple erected fencing wire around the land and formed an entry road to the car parking place from Kanipakam Main Road. Thus, the report reveals that the land developed by the respondent as parking lot does not fall within the jurisdiction of the petitioner-Gram Panchayat.
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> On question No.2, the Commissioner reported that

he found that R&B Department had handed over the main road (R&B) Road from Agarampalli to Kanipakam to the Temple and that the Temple is maintaining the said road. Insofar as parking lot is concerned, the Commissioner reported that the Gram Panchayat failed to show specific place for vehicle parking maintained by it, and that it merely showed 250 sq. yds. of land, proposed for vehicle parking, which is said to be already in use for weekly shandy market near the water tank. The Commissioner further reported that the Gram Panchayat except C.C. pavement, which falls in between Varadha Raja Swamy Temple and Eswara Swamy Temple, there is no other way that connects to the land of the Gram Panchayat. He reported that around four sides of the Temple, the temple authorities acquired an extent of Ac.9.09 cents for developing Mahaprakaram of Swayambhu Sri Varasiddi Vinayaka Swamy Temple. He specifically reported that the Gram Panchayat has not provided any specific place for vehicle parking. The Commissioner further reported that the Temple apart from providing drinking water facilities to pilgrims, has also provided street lighting from Agarampalli to Temple Main Road.

Apart from the above report of the Advocate Commissioner, a perusal of the materials handed over by the parties to the Advocate Commissioner, which the Advocate Commissioner appended to the report would disclose that the respondent had paid an amount of Rs.21,92,618/- to different persons for acquiring their land, which it had developed as parking space.

Thus it is clear that the land on which the respondent developed parking stand and sought to auction its leasehold rights belongs to it, and it can deal with it in the manner it likes. The petitioner not being the owner of the land on which the respondent developed parking stand, and the land not falling within the local jurisdiction of the petitioner-Gram Panchayat, the petitioner-Gram Panchayat, it cannot be said to have any right to question the Tender Notification issued by the respondent, for auctioning the leasehold rights of the Parking Stand developed by it in the land, which falls within the jurisdiction of Punya Samudram Village and not the petitioner-Gram Panchayat. Since the petitioner

> is not the owner of the land and the land not falling within its local jurisdiction, none of the contentions advanced on its behalf that it alone is entitled to establish parking stand and collect parking fee and that no person is entitled to establish or maintain parking stand unless he obtains permission/licence from the Gram Panchayat, as required by the provisions of the Panchayat Raj Act, 1994, merit consideration."

The appellant challenged the afore-mentioned order by filing an appeal under Clause 15 of the Letters Patent which has been registered as Writ Appeal (SR).No.126729 of 2006 because there is delay in filing the appeal. It has also filed W.A.M.P.No.2651 of 2006 for condonation of delay.

During the pendency of the appeal, the management of the temple issued fresh notice dated 14-2-2007 for auction of the right to collect parking fee for the year 2007-2008. The appellant challenged the same in Writ Petition No.3986 of 2007 on grounds similar to those taken in Writ Petition No.19531 of 2004, which, as mentioned above, was dismissed by the learned Single Judge. Along with the writ petition, the petitioner filed WPMP.No.5096 of 2007 for staying the proposed auction. The learned Single Judge declined the appellant's prayer for interim relief and passed the following order:

> "Let the auction go on. In case the petitioner succeeds, it shall be incumbent on the part of the first respondent to comply with other requirements of law."

We have heard Shri D. Vijayachandra Reddy, learned counsel for the appellant. He made strenuous efforts to persuade us to stall the auction of the parking lot by contending that the authorities of the temple have not obtained permission from the competent authority in terms of Sections 115 and 116 of the Andhra Pradesh Panchayat Raj Act, 1994 and Section 117 of the Motor Vehicles Act, 1988. Learned counsel then submitted that if the temple authorities are not restrained from conducting the auction for award of contract for collection of

parking fee, the revenue of the appellant will be adversely affected.

In our opinion, there is no merit in the arguments of the learned counsel and the interim order passed by the learned Single Judge does not call for interference. It is neither the pleaded case of the appellant nor the learned counsel argued that the order under challenge is vitiated due to want or excess of jurisdiction or by an error of law apparent on the face of the record. In the main writ petition filed by it, the appellant has pleaded that before establishing parking lot, the management of the temple did not take permission from the Gram Panchayat and the concerned authority of the Transport Department and that if the temple is allowed to collect parking fee, the revenue of the Gram Panchayat will be adversely affected. At this stage, it is difficult to speculate whether the learned Single Judge would accept the appellant's challenge to the action initiated by the management of the temple for auctioning the parking lot. However, we do not have the slightest hesitation to observe that in view of the dismissal of Writ Petition No.19531 of 2004, the learned Single Judge has rightly declined to pass interim order in terms of the prayer made by the appellant. While dismissing the earlier writ petition, the learned Single Judge has unequivocally held that the land on which the parking lot has been developed belongs to the temple. Therefore, we do not find any valid ground to interfere with the discretion exercised by the learned Single Judge by declining the appellant's prayer for interim stay.

We are further of the view that the elements of balance of convenience, irreparable injury and public interest are against the grant of interim order in terms of the prayer made by the appellant. If the appellant succeeds in the writ petition, the Court may issue appropriate consequential direction and even compensate it in lieu of the loss of revenue. However, if the temple authorities are restrained from auctioning the right to collect parking fee, there will be chaos near the temple and the general public will be greatly inconvenienced.

Therefore, there is no valid ground or justification to restrain the temple authorities from auctioning the parking lot.

In the result, the appeal is dismissed. For filing a frivolous appeal like the present one, the appellant is saddled with costs of Rs.5,000/-. The amount of costs be recovered from the Sarpanch who has chosen to institute this appeal and be deposited with the Andhra Pradesh State Legal Services Authority within a period of one month from today. Member Secretary, Andhra Pradesh State Legal Services Authority is directed to inform the Court in writing whether or not the appellant has deposited the amount of costs so that, if necessary, the Court may issue direction for recovery of the amount of costs as arrears of land revenue.

As a sequel to dismissal of the appeal, WAMP.No.398 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

March 8, 2007

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